

REMARKS

Claims 1, 3 - 6, 9 and 10 are pending in this application.

Rejection of Claims 1, 5 and 6 under 35 U.S.C. § 103(a)

Claim 1, 5 and 6 are rejected under 35 U.S.C. § 102(b) as being unpatentable in view of Yamamoto et al. (EP 1 157 693) in view of "Shokuhin Kenyu Seika Jyouhou".

The present claimed composition is a food/drink having antiallergenic action including one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin. The one or more ingredients in the composition are obtained as a mixture containing tea extracts and ground tea and the tea is at least one selected from the group consisting of Benifuki, Benihomare and Benifugi, wherein the one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg. For the reasons presented below, Yamamoto et al., fails to disclose or suggest each feature claimed in claim 1.

Yamamoto alone, or in combination with Shokuhin, fail to disclose or suggest any composition that is "obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifugi" as in the claimed composition. The claimed composition advantageously provides a food/drink having the desirous antiallergenic affects associated with any of EGCG3"Me, GCG3"Me, EGCG4"Me and strictinin without the typical bitterness and unappetizing taste that accompanies these catechin derivatives when they are conventionally used to prepare a food or drink product. Unlike the claimed composition, Yamamoto (with Shokuhin) provide for foods or beverages which only include tea extracts and therefore have a bitterness associated therewith. The claimed composition improves the flavor of a composition that provides the desired antiallergenic properties. This superior flavor improvement is a direct result of the one or more catechin derivative ingredients that are included in the composition "being obtained as a mixture

containing tea extracts and ground tea". Specifically, as discussed in Example 4 of the present specification, an experimental taste testing occurred whereby 7 of 10 participants indicated that the claimed composition which includes a mixture of tea extracts and ground tea (in this iteration, ground Benifuki) had a superior flavor and was most similar to the genuine tea brewed from tea leaves. Thus, the claimed composition provides an improved food/drink as compared to a drink formed from tea extracts alone. Therefore, Yamamoto fails to disclose or suggest a composition equivalent to the claimed arrangement because Yamamoto merely provides that a desired food or beverage is produced using **tea extracts**. Thus, Yamamoto derives a food or beverage that is wholly unlike the claimed composition which provides that the food/drink having antiallergenic affect includes EGCG3"Me that is "**obtained from a mixture containing tea extracts and ground tea".** The claimed composition provides for a highly effective antiallergenic composition that has a significant taste improvement over compositions such as those described in Yamamoto.

In response to Applicants previously submitted remarks, the Office Action on page 10 cites *In re Keller* to suggest that Applicant has merely attacked the references individually and thus cannot show nonobviousness. Applicants respectfully disagree. Rather, contrary to the assertion in the Office Action, Applicant discusses the references individually in order to point out that each reference discussed lacks a common feature and therefore the combination of the references is unable to disclose or suggest the claimed composition. In fact, Applicant was utilizing the factual inquiries set forth in *Graham v. John Deere Co.* in order to (1) determine the scope and contents of the prior art and (2) ascertain the differences between the prior art and the claims at issue. Specifically, Yamamoto merely discloses a composition having a catechin that is produced by **only using tea extracts**. Yamamoto fails to disclose or suggest a food or drink composition that includes "**ingredients being obtained as a mixture containing tea extracts and ground tea**" as in the claimed composition. The Office Action further asserts that Yamamoto provides for an amount of derived catechin being within the range claimed in claim 1. Applicant respectfully disagrees because the amount of catechin in Yamamoto is only derived from tea extracts and NOT derived from "**a mixture containing tea extracts and ground tea**" as in the claimed arrangement.

Similarly to Yamamoto, Shokuhin also fails to disclose or suggest any food or beverage including the claimed amount of ingredients “being obtained as a mixture containing tea extracts and ground tea” as claimed in claim 1. Shokuhin merely describes the ideal times for harvesting tea leaves to maximize the amount of catechin in the leaves and the known concept that tea is made from tea leaves. The Office Action on page 4 erroneously equates the content of EGCG3”Me in the tea leaves being harvested as being equivalent to the claimed amount of ingredients in the present claimed composition. Merely providing that tea leaves have a certain amount of catechin is known but does not provide enabling disclosure of producing a food or drink having a certain amount of catechin wherein the “ingredients [are] obtained as a mixture containing tea extracts and ground tea” as in the present claimed composition. The Office Action, on page 12, cites the Background of Shokuhin in support of the assertion that Shokuhin is concerned with the amount of catechin in foodstuffs. The cited portion reads as follows:

“Nowadays the search for anti-allergenic substances in foodstuffs has been strongly demanded to deal with allergic disorders which have become a serious social problem. Therefore, in order to effectively utilize the epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3”Me; Fig. 1), an anti-allergic substance found out in tea leaves, an objective of the present invention is to clarify the variation in the content due to the tea variety, tea picking time and tea type prepared therefrom.”

From this passage the Office Action asserts that Shokuhin is “most certainly concerned with the amount of EGCG3”Me in food”. Applicant respectfully disagrees. Contrary to the assertion in the Office Action, the relied upon section of Shokuhin identifies that anti-allergic substances are desired to be placed in foods but the “objective...is to clarify the variation in the content due to the tea variety, tea picking time and tea type produced therefrom”. The content of EGCG3”Me in a tea leaf does not automatically correlate to the amount contained in a food or drink produced FROM the tea leaf. The cited section is clearly concerned with the content of the catechin in the tea leave and not the overall catechin content in any food or drink. Applicant’s assertion is supported when reading the entirety of the reference which identifies that the content of the catechin refers to the leaves themselves based on when they were harvested and NOT to the overall content of a food/drink produced using a mixture of ground tea and tea extracts as in the

claimed composition. The Office Action further cites Fig. 2 of Shokuhin in support of the assertion that Shokuhin "teaches the tea (drink) made from the tea leaves as well as the content of EGCG3"Me in several varieties of tea leaves". Applicant, again, respectfully disagree. Figure 2 merely identifies tea varieties and shows the catechin content in those varieties. However, from the reading of the reference in its entirety, it is clear that Figure 2 is discussing catechin content in tea leaves which were picked at the first harvest time and NOT the content in any tea (drink) made from these leaves. Moreover, there is nothing that discusses producing an extract from the leaves in any manner, nor is there anything in Shokuhin that suggests using ground tea and tea extracts to produce a food or drink as claimed in claim 1. Therefore, similarly to Yamamoto, Shokuhin fails to disclose or suggest a food or drink having any of claimed derived catechins and/or strictinin with the "one or more ingredients being obtained as a mixture containing tea extracts and ground tea" as claimed in claim 1.

Thus, Yamamoto describes producing a food or drink using a tea extract and Shokuhin describes harvesting tea leaves to maximize the amount of catechin in the leaves being harvested. There is nothing in either reference that discloses or suggests a food/drink that includes active ingredients within a claimed range which are "obtained as a mixture of tea extracts and ground tea" as in the claimed composition. As this inventive feature is neither disclosed nor suggested in each reference individually, it follows that any combination of these references fails to render the claimed composition obvious.

As previously discussed, the motivation to combine Yamamoto with Shokuhin presented in this Office Action is erroneous. The Office Action asserts that the extraction of the leaves as performed in Yamamoto would proceed faster if the leaves had a larger surface area and therefore it would be obvious to use ground tea in the extraction process. This may be the case if the claimed invention was directed to improving the extraction process. However, the claimed composition is one that includes ingredients "obtained as a mixture of tea extract and ground tea". Applicant respectfully submits that even if one were to use ground tea to improve the extraction process performed in Yamamoto, the resulting food or drink would still only include tea extract. Using tea leaves in an extraction process to obtain purified tea extract as in Yamamoto is NOT equivalent to a food or drink composition that has "ingredients being

obtained as a mixture of tea extracts AND ground tea" as in the claimed composition. Moreover, Yamamoto describes using tea leaves in the extraction process. Tea leaves as used in Yamamoto are NOT equivalent the ground tea of the present claimed arrangement which has a smaller particle size than conventional tea leaves (see Specification, page 7, lines 8 – 10 stating ground tea has a particle size of 8 micrometers). This argument has been previously presented and in response thereto, the Office Action, on page 11, cites *In re Kahn* and MPEP §2144 which states "the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant". However, using tea leaves in an extraction process does not "suggest what the inventor has done, but [being used] for a different purpose". Rather, using tea leaves in an extraction process to produce tea extract and producing a food using the purified tea extract, as suggested by the Office Action, results in a composition that is fundamentally different from the claimed composition. Specifically, the modified Yamamoto composition only includes tea extracts and fails to disclose or suggest using the ground tea for any other purpose aside from producing the extract. Therefore, not only is the purpose behind the motivation incorrect, the resulting composition is NOT equivalent to the present claimed composition because it fails to include both tea extract AND ground tea.

Moreover, paragraphs 24 and 25 further relied on in the Office Action merely provide that the extract is produced from tea leaves. Conventional tea leaves are not equivalent to the ground tea powder used in the claimed composition. However, when one skilled in the art considers the entirety of the reference, it is clear that **only** "the obtained extract is used finally as a component in food and drink" (Yamamoto, para. 24) as can be seen from the plurality of examples described in Yamamoto which go through very specific and comprehensive filtering methods to obtain the extract for use in the final product. These filtering techniques ensure that only extract is being utilized and not any other byproduct from the extraction process (see Examples 1 and 2 describing the extraction process). Therefore, modifying Yamamoto with the harvested dry leaves of Shokuhin teaches away from the composition produced by Yamamoto which uses only tea extracts in the food or drink.

Therefore, even if one were to combine Yamamoto with Shokuhin, the resulting composition would not be equivalent to the present claimed composition which uses a "mixture containing tea extracts and ground tea" to provide a significant improvement in taste over a composition that only includes a tea extract such as the composition described by Yamamoto (with Shokuhin). Additionally, Yamamoto (with Shokuhin) fails to disclose or suggest that "the one or more ingredients are contained in an amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as claimed in claim 1. Rather, and unlike the claimed composition, Yamamoto (with Shokuhin) disclose a composition that provides tea extract within the claimed range but NOT catechin being derived from "a mixture of tea extract and ground tea" as in the claimed composition. Applicant respectfully submits that modifying the food/drink in Yamamoto (with Shokuhin) would require more than mere routine experimentation to produce a composition equivalent to the claimed composition. Specifically, as discussed above Yamamoto details specific and comprehensive extraction procedures to produce an extract with the desired amount of catechin. Merely adding ground tea, as suggested in the Office Action would require significant experimentation/modification to produce a composition having 'ingredients...contained in an amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" wherein the ingredients are "obtained as a mixture of tea extract AND ground tea" as claimed in claim 1. The claimed composition provides a distinct advantage over the Yamamoto (with Shokuhin) composition without spoiling the antiallergenic action of the catechin by forming the composition from "a mixture containing tea extracts and ground tea" with an improved taste which is closer to genuine tea products. Therefore, Yamamoto with Shokuhin fails to disclose or suggest the feature of the claimed composition. Consequently, withdrawal of the rejection of claim 1 is respectfully requested.

Claim 5 includes features similar to claim 1 and therefore the remarks presented above with respect to claim 1 are applicable to claim 5. Thus, claim 5 is considered patentable for the reasons as presented above with respect to claim 1.

In view of the above remarks, Applicant respectfully submits that Yamamoto fails to disclose or suggest anything makes the invention as claimed in claim 1 and/or 5 unpatentable. As

claim 6 is dependent on claim 5, it is respectfully submitted that these claims are patentable over Yamamoto. Consequently, withdrawal of the rejection of claims 1, 5 and 6 is respectfully requested.

Rejection of Claims 1, 3-6 and 9 under 35 U.S.C. § 103(a)

Claim 1, 3 – 6 and 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Shokuhin Kenkyu Seika Jyouhou (National Food Research Institute) in view of Piper (WO 90/15542) and Steinberg (US Pat. No. 3,047,396).

The present claimed composition is a food/drink having antiallergenic action including one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallicatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallicatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin. The one or more ingredients in the composition are obtained as a mixture containing tea extracts and ground tea and the tea is at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, wherein the one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg. For the reasons presented below, Shokuhin alone or in combination with any of Piper and/or Steinberg, fail to disclose or suggest each feature claimed in claim 1.

Shokuhin discusses harvesting tea leaves at different times to obtain leaves with different levels of EGCG3"Me. While Shokuhin states that EGCG3"Me is an antiallergenic found in tea leaves, Shokuhin is merely concerned with identifying preferred times for picking the leaves and the preferred type of tea prepared from the leaves in order to increase EGCG3"Me content. There is nothing in Shokuhin that discloses or suggests using tea leaves as part of a mixture with tea extract to produce a food/drink having antiallergenic properties. Gathering tea leaves is NOT equivalent to using “ground tea” in combination with “tea extracts” as an ingredient in a food or drink as recited in claim 1.

Therefore, Shokuhin fails to disclose or suggest any food or beverage including the claimed amount of ingredients "being obtained as a mixture containing tea extracts and ground tea" as claimed in claim 1. Unlike the claimed composition, Shokuhin describes the ideal times for harvesting tea leaves to maximize the amount of catechin in the leaves and the known concept that tea is made from tea leaves. The Office Action on page 5 erroneously equates the content of EGCG3"Me in the tea leaves being harvested as being equivalent to the claimed amount of ingredients in the present claimed composition. Merely providing that tea leaves have a certain amount of catechin is known but does not provide enabling disclosure of producing a food or drink having a certain amount of catechin wherein the "ingredients [are] obtained as a mixture containing tea extracts and ground tea" as in the present claimed composition. The Office Action, on page 12, cites the Background of Shokuhin in support of the assertion that Shokuhin is concerned with the amount of catechin in foodstuffs. The cited portion reads as follows:

"Nowadays the search for anti-allergenic substances in foodstuffs has been strongly demanded to deal with allergic disorders which have become a serious social problem. Therefore, in order to effectively utilize the epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me; Fig. 1), an anti-allergic substance found out in tea leaves, an objective of the present invention is to clarify the variation in the content due to the tea variety, tea picking time and tea type prepared therefrom."

From this passage the Office Action asserts that Shokuhin is "most certainly concerned with the amount of EGCG3"Me in food". Applicant respectfully disagrees. Contrary to the assertion in the Office Action, the relied upon section of Shokuhin identifies that anti-allergic substances are desired to be placed in foods but the "objective...is to clarify the variation in the content due to the tea variety, tea picking time and tea type produced therefrom". The content of EGCG3"Me in a tea leaf does not automatically correlate to the amount contained in a food or drink produced FROM the tea leaf. The cited section is clearly concerned with the content of the catechin in the tea leave and not the overall catechin content in any food or drink. Applicant's assertion is supported when reading the entirety of the reference which identifies that the content of the catechin refers to the leaves themselves based on when they were harvested and NOT to

the overall content of a food/drink produced using a mixture of ground tea and tea extracts as in the claimed composition. The Office Action further cites Fig. 2 of Shokuhin in support of the assertion that Shokuhin “teaches the tea (drink) made from the tea leaves as well as the content of EGCG3”Me in several varieties of tea leaves”. Applicant, again, respectfully disagree. Figure 2 merely identifies tea varieties and shows the catechin content in those varieties. However, from the reading of the reference in its entirety, it is clear that Figure 2 is discussing catechin content in tea leaves which were picked at the first harvest time and NOT the content in any tea (drink) made from these leaves. Moreover, there is nothing that discusses producing an extract from the leaves in any manner, nor is there anything in Shokuhin that suggests using ground tea and tea extracts to produce a food or drink as claimed in claim 1.

The Office Action further asserts that Piper teaches, in claim 1, a composition formed from a ground tea and tea extract. Applicant respectfully disagrees. Rather, and contrary to the assertion in the Office Action, Piper merely describes a “beverage forming composition comprising ground tea or coffee”. In Piper, the tea or coffee is capable of flowing and metering via a powder dispense valve within a vending machine, whereby, the addition of de-aerated water at a temperature ranging between 60° to 90° C to the composition having a particle size selected such that the portion of ground components which float to the surface of the beverage is less than 1% by weight of the total. Unlike the present claimed composition, Piper in no way disclose using or providing a beverage containing specified catechin derivatives such as “EGCG3”Me” both extracted from a specified tea such as “Benifuki” with the addition of specified ground Benifuki tea powder to improve the flavor of the beverage and make the beverage taste more like brewed tea. There is nothing in Piper that discloses or suggests a composition that includes an extract of any kind. The Office Action on page 13, cites page 28, line 19 – page 29, line 11 of Piper to assert that an extract with ground tea is disclosed. However, the section relied on describes the process by which hot water is added to ingredients to produce the beverage. Merely adding hot water to tea leaves from a vending machine fails to produce a composition having the derived catechin in the claimed amount and which is obtained “as a mixture of tea extract and Ground tea” as in the claimed composition. The imprecision of making a beverage using a vending machine would not render one skilled in the art to obtain enough of the catechin to produce the desired anti-allergenic affects as claimed in claim 1. Thus,

Piper provides for a conventionally brewed coffee or tea beverage and not one wherein "one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji" as in the claimed arrangement. Piper is not at all concerned with a particular food/drink including the present claimed ingredients.

The Office Action further relies on Steinberg which describes a tea bag that includes 2.4 grams of a mixture of ground tea contained therein. However, similarly to both Shokuhin and Piper, there is no enabling disclosure of a food or drink that includes "one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3"Me) and gallocatechin-3-O-(3-O-methyl)gallate (GCG3"Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4"Me) and gallocatechin-4-O-(4-O-methyl)gallate (GCG4"Me) as an optical isomer thereof and strictinin, **said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji**" as in the claimed arrangement. Steinberg fails to disclose or suggest the use of tea extracts in any way for any purpose. Moreover, the teas described in Steinberg are fundamentally different from and not equivalent to the claimed varieties of tea.

The Office Action also asserts that, based on the Examiner's calculation, the combined references teach the claimed food/drink in the claimed amount. Applicant respectfully disagrees. Specifically, the Applicant respectfully disagrees with the assertion that Shokuhin describes a food/drink composition. There is nothing in Shokuhin that discloses or suggests any such combination. Moreover, the identified content of EGCG3"Me asserted on page 9 of the Office Action is NOT an equivalent to any of the elements claimed in claim 1. As discussed above, the amount of the catechin in an amount of leaves cannot be readily substituted for the amount of ingredients obtained as part of a mixture of tea extract and ground tea. These are non-equivalent values and therefore, Applicant respectfully submits that the calculation provided in support of the assertion of obviousness is incorrect. Furthermore, even if these references were combined they fail to disclose or suggest a food or drink wherein "one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the

group consisting of Benifuki, Benihomare and Benifuji" as in the claimed arrangement. Consequently, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 3, 4 and 9 are dependent on claim 1 and are considered patentable for the reasons presented above with respect to claim 1.

Claim 5 includes features similar to claim 1 and therefore the remarks presented above with respect to claim 1 are applicable to claim 5. Thus, claim 5 is considered patentable for the reasons as presented above with respect to claim 1.

In view of the above remarks and amendments to the claims, Applicant respectfully submits that Shokuhin alone or in combination with any of Piper and/or Steinberg fail to make claims 1 and 5 unpatentable. As claims 3, 4 and 9 are dependent on claim 1 and claim 6 is dependent on claim 5, Applicant respectfully submits that claims 3, 4, 6 and 9 are similarly not made unpatentable by Shokuhin with any of Piper and/or Steinberg. Therefore, withdrawal of the rejection of claims 1 – 6 and 9 is respectfully requested.

Rejection of Claim 10 under 35 U.S.C. § 103(a)

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Shokuhin Kenkyu Seika Jyouhou (National Food Research Institute) in view of Piper (WO 90/15542) and Steinberg (US Pat. No. 3,047,396) and further in view of Marquardt (US Pat. No 5,050,775).

Claim 10 is considered patentable for the reasons discussed above with respect to claim 1. Shokuhin, Piper and Steinberg are discussed in detail above the those remarks remain applicable to the tea bag of claim 10 and therefore are incorporated herein by reference. Specifically, Shokuhin (with Piper and/or Steinberg) fail to disclose or suggest a "tea bag comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, and said one or more

ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as recited in claim 10.

Unlike the claimed tea bag, Marquardt describes a beverage dispenser and more particularly to a disposable carton in which a bag containing a selected beverage may be mounted to facilitate the dispensing of the beverage. The carton is of a four piece construction including a tubular multi-sided carton body, a base on which the beverage bag is supported, a support slidably mounted in the carton body for supporting the filler of the beverage bag, and a cap. All necessary components of the carton automatically lock together when folded and no adhesives are required. There is also a cup holder which may be selectively mounted on the carton or which may be supported independently of the beverage dispenser adjacent the beverage dispenser (see Abstract).

The bag sealed in a carton as relied in the Office Action is fundamentally different from the claimed "tea bag" that includes one or more ingredients that are "obtained as a mixture containing tea extracts and ground tea". The container of Marquart is wholly unlike and unrelated to the present claimed tea bag and adds nothing to any of Shokuhin, Piper and/or Steinberg that provides enabling disclosure of a "tea bag comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, **said one or more ingredients being obtained as a mixture containing tea extracts and ground tea**, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifaji, and said one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as recited in claim 10. The Office Action, on page 13 asserts that, because Applicants point to Examples 3 and 4 of the present specification to support the description of the claimed tea bag, that the beverage bag of Marquart is equivalent. Applicant respectfully disagrees. The bag in Marquart is mounted in machine and dispenses previously prepared liquid beverages. This is fundamentally different from the claimed tea bag having a extract/powder ingredient combination and which is used to produce a beverage directly from the tea bag itself. One skilled in the art would NOT equate the bag of Marquart with a tea bag of any type.

Therefore, as Shokuhin, Piper, Steinberg and Marquant, individually or in combination fail to disclose or suggest “tea bag comprising one or more ingredients selected from the group consisting of EGCG3”Me, GCG3”Me, EGCG4”Me, and GCG4”Me and strictinin, **said one or more ingredients being obtained as a mixture containing tea extracts and ground tea**”, Applicants respectfully submit that claim 10 is patentable over Shokuhin, Piper, Steinberg and Marquant. Consequently, withdrawal of the rejection of claim 10 is respectfully requested.

Rejection of Claim 1 and 3 - 6 under 35 U.S.C. § 103(a)

Claims 1 and 3 - 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over VirtualCoffee.com in view of Shokuhin Kenkyu Seika Jyouthou (National Food Research Institute) and Steinberg (US Pat. No. 3,047,396).

The present claimed composition is a food/drink having antiallergenic action. The composition includes one or more ingredients selected from the group consisting of epigallocatechin-3-O-(3-O-methyl)gallate (EGCG3”Me) and gallicatechin-3-O-(3-O-methyl)gallate (GCG3”Me) as an optical isomer thereof, epigallocatechin-4-O-(4-O-methyl)gallate (EGCG4”Me) and gallicatechin-4-O-(4-O-methyl)gallate (GCG4”Me) as an optical isomer thereof and strictinin. The one or more ingredients in the composition are obtained as a mixture containing tea extracts and ground tea and the tea is at least one selected from the group consisting of Benifuki, Benihomare and Benifuji, wherein the one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg. For the reasons presented below, VirtualCoffee.com alone or in combination with any of Shokuhin and/or Steinberg, fail to disclose or suggest each feature claimed in claim 1.

Shokuhin and Steinberg are discussed hereinabove and individually or together fail to disclose or suggest a food/drink having antiallergenic action including a catechin derived from any of Benifuki, Benihomare and Benifuji teas wherein the “one or more ingredients being obtained as a mixture containing tea extracts and ground tea...[and] the one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg” as claimed in claim 1. The remarks presented above regarding Shokuhin and Steinberg are therefore incorporated herein by reference.

The Office Action asserts that VirtualCoffee.com's "Guywan Method" of serving tea where the dried tea leaves are combined with hot water and drank without separating the extract from the leaves, when combined with the harvesting plans of Shokuhin and the teabag of Steinberg, provides enabling disclosure of the claimed composition. Specifically, the Office Action points out that dried tea leaves are brittle and susceptible to breakage and that preparation of the extract portion would proceed faster with larger leaf surface area. Applicant respectfully disagrees. Applicants reiterate that the Office Action fundamentally misunderstands the claimed composition which is a food or drink preparation that is produced using "a mixture of tea extract and ground tea". The continued assertion regarding increasing surface area which is useful for improving the preparation of the extract is irrelevant to the claimed composition. The claimed food/drink has a specified catechin in a particular amount which is obtained by using a mixture of tea extract and ground tea in order to improve the taste of the resulting food or drink. Unlike the claimed composition, VirtualCoffee.com merely describes brewing tea from tea leaves. The tea leaves used in the Guywan Method are NOT equivalent to the claimed ground tea claimed in claim 1 which is combined with tea extract for producing a food or drink. Specifically, the conventional tea leaves which used in the Guywan Method are larger than the ground tea used as part of the mixture with tea extract to produce the claimed food or drink with antiallergenic action. For example, on page 7, lines 5 – 11 of the present specification, the ground tea which is combined with the tea extract is ground to a particle size of 8 micrometers. Conventional tea leaves, such as those described in VirtualCoffee.com, are larger. Moreover, there is nothing that discloses or suggests that they are combined with tea extract for use in preparing a food or drink as in the claimed arrangement.

Furthermore, the Office Action states that the Guywan Method describes drinking tea without separating the extract. This is fundamentally different from the claimed composition that is food or drink wherein the catechin ingredients "are obtained as a mixture of tea extract and ground tea". As admitted in the Office Action, VirtualCoffee.com is only concerned with tea leaves because the tea does not include any tea extract. Therefore, using tea extract of any kind as part of the mixture teaches away from VirtualCoffee.com.

Therefore, as VirtualCoffee.com merely describes the known action of brewing tea and Shokuhin describes harvesting times to maximize potential catechin presence in tea leaves and Steinberg describes a tea bag having a certain amount of ground tea leaves, Applicant respectfully submits that VirtualCoffee.com, Shokuhin and Steinberg, individually or in combination fail to disclose or suggest "A food/drink having antiallergenic action...[including] one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifujii, wherein said one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as claimed in claim 1. Therefore, withdrawal of the rejection of claim 1 is respectfully requested.

Claim 5 includes features similar to claim 1 and therefore the remarks presented above with respect to claim 1 are applicable to claim 5. Thus, claim 5 is considered patentable for the reasons as presented above with respect to claim 1.

In view of the above remarks, Applicant respectfully submits that VirtualCoffee.com alone or in combination with Shokuhin and/or Steinberg fails to disclose or suggest anything makes the invention as claimed in claim 1 and/or 5 unpatentable. As claims 3 and 4 are dependent on claim 1 and claim 6 is dependent on claim 5, it is respectfully submitted that these claims are patentable over VirtualCoffee.com with any of Shokuhin and/or Steinberg. Consequently, withdrawal of the rejection of claims 1 and 3 – 6 is respectfully requested.

Rejection of Claim 10 under 35 U.S.C. § 103(a)

Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over VirtualCoffee.com in view of Shokuhin Kenkyu Seika Jyouhou (National Food Research Institute) and Steinberg (US Pat. No. 3,047,396) and further in view of Marquardt (US Pat. No 5,050,775).

Claim 10 is considered patentable for the reasons discussed above with respect to claim 1. VirtualCoffee.com, Shokuhin and Steinberg are discussed in detail above the those remarks

remain applicable to the tea bag of claim 10 and therefore are incorporated herein by reference. Specifically, VirtualCoffee.com (with Shokuhin and/or Steinberg) fail to disclose or suggest a "tea bag comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifui, and said one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg" as recited in claim 10.

Unlike the claimed tea bag, Marquardt describes a beverage dispenser and more particularly to a disposable carton in which a bag containing a selected beverage may be mounted to facilitate the dispensing of the beverage. The carton is of a four piece construction including a tubular multi-sided carton body, a base on which the beverage bag is supported, a support slidably mounted in the carton body for supporting the filler of the beverage bag, and a cap. All necessary components of the carton automatically lock together when folded and no adhesives are required. There is also a cup holder which may be selectively mounted on the carton or which may be supported independently of the beverage dispenser adjacent the beverage dispenser (see Abstract).

The bag sealed in a carton as relied in the Office Action is fundamentally different from the claimed "tea bag" that includes one or more ingredients that are "obtained as a mixture containing tea extracts and ground tea". The container of Marquardt is wholly unlike and unrelated to the present claimed tea bag and adds nothing to any of VirtualCoffee.com, Shokuhin, and/or Steinberg that provides enabling disclosure of a "tea bag comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, **said one or more ingredients being obtained as a mixture containing tea extracts and ground tea, said tea being at least one selected from the group consisting of Benifuki, Benihomare and Benifui, and said one or more ingredients are contained in amount of 1mg to 500mg per one liter to daily intake of 3mg to 300mg**" as recited in claim 10. The Office Action, on page 13 asserts that, because Applicants point to Examples 3 and 4 of the present specification to support the description of the claimed tea bag, that the beverage bag of

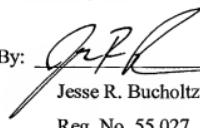
Marquant is equivalent. Applicant respectfully disagrees. The bag in Marquant is mounted in machine and dispenses previously prepared liquid beverages. This is fundamentally different from the claimed tea bag having a extract/powder ingredient combination and which is used to produce a beverage directly from the tea bag itself. One skilled in the art would NOT equate the bag of Marquant with a tea bag of any type.

Therefore, as VirtualCoffee.com, Shokuhin, Steinberg and Marquant, individually or in combination fail to disclose or suggest "tea bag comprising one or more ingredients selected from the group consisting of EGCG3"Me, GCG3"Me, EGCG4"Me, and GCG4"Me and strictinin, **said one or more ingredients being obtained as a mixture containing tea extracts and ground tea**", Applicants respectfully submit that claim 10 is patentable over VirtualCoffee.com, Shokuhin, Steinberg and Marquant. Consequently, withdrawal of the rejection of claim 10 is respectfully requested. Consequently, withdrawal of the rejection of claim 10 is respectfully requested.

Having fully addressed the Examiner's rejections, it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the Applicant's attorney at the phone number below, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Respectfully submitted,
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